

Federal Court



Cour fédérale

**Date: 20240212**

**Docket: IMM-1444-23**

**Citation: 2024 FC 230**

**Ottawa, Ontario, February 12, 2024**

**PRESENT: The Honourable Mr. Justice Manson**

**BETWEEN:**

**MEHMET AYDEMIR**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Introduction**

[1] This is an application for judicial review of a decision (the “Decision”) by a Senior Immigration Officer (the “Officer”) rejecting the Applicant’s pre-removal risk assessment (“PRRA”) application under section 112(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the “Act”).

## II. Background

[2] Mehmet Aydemir (the “Applicant”) is a 30-year-old Kurdish man. He is a citizen of Turkey. He entered Canada in February 2022 through the United States. Upon arrival, he made a refugee claim but was found to be ineligible and a removal order was issued against him.

[3] Under sections 112(1) and 113(c) of the Act, an individual who is subject to a removal order may seek protection as a Convention refugee or a person in need of protection, subject to certain exceptions that are not at issue here. Accordingly, the Applicant sought a PRRA, stating that he faces a risk in Turkey because he is ethnically Kurdish and because of his alleged membership in, and activity in support of, the Peoples’ Democratic Party in Turkey (the “HDP”).

[4] More specifically, the Applicant claims that his life is in danger, that the Turkish government sought to recruit him to fight Kurdish militants because he himself is Kurdish (a policy he says risks his life and afflicts all Kurdish families), and that the local gendarme ordered him to become a guard and assaulted him when he refused to do so. He also alleges that his father died under suspicious circumstances, that his wife was mistreated and detained as a form of pressure against him, and that he was forced to leave his village to a different town, whereupon the local police started pressuring him at his new place of work.

A. *The Decision*

[5] The Officer's Decision begins by observing that the Applicant's counsel (now former counsel) stated in written submissions in April 2022 that the Applicant's personal narrative will be provided, but failed to deliver this narrative by the time of the Decision in December 2022.

[6] The Officer accepted the Applicant's allegation that he is Kurdish. The Officer also accepted that Kurds in Turkey face discrimination, hate crimes, issues with political representation, and a history of violence in response to "their fight for political and societal representation across Turkey". However, while the Officer accepted that Kurds are marginalized in Turkey, the Officer also placed great weight on the documentary evidence before them, a notable part of which stated that, "taken cumulatively, discrimination faced by Kurds does not in general, by its nature or repetition, amount to a real risk of persecution and/or serious harm".

[7] As to the Applicant's profile, the Officer was not convinced that the Applicant was a member of the HDP. Specifically, the Officer found that there was no objective evidence supporting his alleged membership or participation in the HDP, such as a membership card or other documentation from the HDP confirming his involvement, nor "even his personal narrative".

[8] The Officer also held that the Applicant faces "no more than a mere possibility of persecution", nor a risk of torture, to life, or of cruel and unusual treatment or punishment on a balance of probabilities. The Officer found that the Applicant provided insufficient corroborating evidence in support of his allegations, such as letters from other HDP members, friends, or family

members, nor any medical reports, photographic evidence, arrest warrants, or his personal narrative. The submissions as to alleged incidents were also lacking in details and specific information.

[9] The Applicant takes the position that the Decision is procedurally unfair. His position rests on the allegation that his counsel on the PRRA application was incompetent, and that this prejudiced the outcome of the PRRA application. The Respondent and the intervener take the view that the Applicant's representation was not incompetent, and that the Applicant has failed to demonstrate prejudice.

### III. Issues

[10] The application raises the following issues:

- A. Was the Applicant's former counsel incompetent in their representation on the PRRA application?
- B. If so, did former counsel's incompetence raise a sufficient likelihood of prejudice so as to breach the Applicant's right to procedural fairness?

### IV. Analysis

[11] The standard of review with respect to the Applicant's procedural rights is correctness or a standard with the same import (*Canadian Pacific Railway Company v Canada (Attorney*

*General*), 2018 FCA 69 at paras 34-35 and 54-55, citing *Mission Institution v Khela*, 2014 SCC 24 at para 79).

A. *The Identity of Former Counsel*

[12] The parties do not agree as to who exactly acted as counsel for the Applicant in regards to his PRRA application. There is no dispute that Ms. Aparna Das represented the Applicant on his PRRA application. She has been notified of the Applicant's allegations and has joined this proceeding as an intervener. She provided an affidavit and made submissions to the Court.

[13] However, the Applicant also alleges that Mr. Brian Ibrahim Cintosun provided him with legal representation and that he acted as his primary counsel. He has also been notified of the Applicant's allegations and has provided an affidavit, but is otherwise not involved in this application.

[14] Mr. Cintosun has challenged the Applicant's position. His affidavit suggests that he declined to act as counsel for the Applicant and instead referred his matter to Ms. Das. However, Mr. Cintosun admits that he helped the Applicant and Ms. Das communicate and that he talked to the Applicant on a number of occasions "to help in his case", albeit without compensation. He also admits that, on one occasion, he told the Applicant to provide whatever documents could support his case and that, on another occasion, he "warned" the Applicant not to "prepare" a letter from the HDP, because it was known that the HDP does not provide such letters.

[15] I find that Mr. Cintosun acted as counsel for the Applicant for the purposes of this application. He was by his own admission involved in the Applicant's case, and his evidence suggests that his involvement was not limited to facilitating a referral. It went as far as to advise the Applicant in certain aspects of his application – namely, whether he should “prepare” a letter from the HDP.

B. *Allegations of Incompetence*

[16] All parties agree as to the general framework that must be met to establish procedural unfairness due to incompetent representation. Firstly, the Applicant has a preliminary burden of giving notice to his former counsel so as to allow counsel an opportunity to respond to the allegation of incompetence. Whether the Applicant gave adequate notice is not determinative of this application.

[17] Additionally, the Applicant must further show that counsel's acts or omissions constituted incompetence, and a miscarriage of justice occurred as a result. This is a high standard that can only be met in exceptional circumstances (*Brown v Canada (Citizenship and Immigration)*, 2012 FC 1305 at paras 55-57, citing *R v GDB*, 2000 SCC 22 [*GDB*] at paras 27-29).

[18] The Applicant states that his former counsel was incompetent for multiple reasons. First, neither one of his former counsel advised him on the documents required to support his PRRA application. Second, former counsel did not use a letter that the Applicant alleges is from the HDP office in Ankara, Turkey, and that attests to his political involvement. Third, Ms. Das informed

the Officer in her written submissions that she will be forwarding a personal narrative from the Applicant, but failed to do so.

[19] The first and second allegations are contradicted by the evidence provided by former counsel. Ms. Das says that she informed the Applicant through Mr. Cintosun and a translator that she needs documents proving his political activity. She says the Applicant replied that he had no documents. As for the HDP letter, Ms. Das says she found the document “questionable” because, based on her experience, the letter is not consistent with other HDP documents she has seen in her work, and it was unusual, and in fact contrary to the documentary evidence, for the HDP’s office in Ankara to issue such a letter. Ms. Das believed the Applicant would be better served if the letter was not submitted.

[20] The evidence of Ms. Das is supported by the affidavit of Mr. Cintosun, who states that he advised the Applicant that he could submit “whatever documents, or photos or videos, he could obtain to support his case”. Mr. Cintosun further alleges that he also reviewed the HDP letter and believed it to be inauthentic. He advised the Applicant that the decision maker would know that the HDP would not issue such letters and “warned” the Applicant against submitting the letter. The Applicant admits that Mr. Cintosun informed him that he could submit whatever evidence supports his case, but then alleges that neither counsel went as far as to give specifics. This is contrary to the Applicant’s own submission that he discussed the HDP letter with his counsel.

[21] Regarding the third allegation that Ms. Das failed to provide the Officer with a personal narrative despite representing that she will do so, the evidence suggests otherwise. Ms. Das notes

that, contrary to the Officer's preliminary note, her submissions in April 2022 did not state that she would be providing the Applicant's personal *narrative*, but rather that she will be providing his personal *disclosure*, which she was unable to translate in time.

[22] The certified record from the Applicant's file before the Officer attests to the evidence provided by Ms. Das. It shows that her cover letter in her first submission from April 18, 2022, stated that she will be providing "personal documents":

Please be advised that the Applicant submitted personal documents to me in advance. However, the translator informed me today that she will require additional time as she is very unwell. I am therefore, unable to provide the personal documents before the deadline. I will send it shortly.

[23] The certified record also shows that in a further correspondence dated April 22, 2022, Ms. Das did indeed provide various translated documents, including an extract of a civil registry document of the Applicant, his social security information, and his military status information.

[24] Notably, the certified record also shows that the Applicant did provide an affidavit in which he adopted Ms. Das's written submission in whole to explain his circumstances. The absence of a personal narrative in the Applicant's words may be unusual. However, this Court has noted that such a practice is acceptable (*Ferguson v Canada (Citizenship and Immigration)*, 2008 FC 1067 [*Ferguson*] at paras 29-34).

[25] The Applicant further alleges that Mr. Cintosun was the primary counsel for the Applicant, that he "privately charged the Applicant", that Ms. Das only worked on the submissions that



appeared before the Officer, and that Ms. Das “made the Applicant” apply for legal aid. The Applicant provides no evidence in support of this speculative claim.

[26] The Applicant has not met the high threshold of demonstrating incompetence on the part of his former counsel. Both Ms. Das and Mr. Cintosun appear to have requested evidence from the Applicant, assessed the evidence that the Applicant provided, determined it to be questionable and against his best interests, and subsequently argued his application with the limited documentation available to them.

[27] Given the above finding, it is not necessary for me to determine if the alleged incompetence of former counsel prejudiced the outcome of the Decision.

[28] There was no procedural unfairness.

V. Conclusion

[29] The application is dismissed.

**JUDGMENT in IMM-1444-23**

**THIS COURT'S JUDGMENT is that:**

1. The application is dismissed.
2. There is no question for certification.

"Michael D. Manson"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-1444-23

**STYLE OF CAUSE:** MEHMET AYDEMIR v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JANUARY 30, 2024

**JUDGMENT AND REASONS:** MANSON J.

**DATED:** FEBRUARY 12, 2024

**APPEARANCES:**

Vakkas Bilsin FOR THE APPLICANT

Brad Bechard FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Lewis & Associates FOR THE APPLICANT  
Barristers and Solicitors  
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT  
Toronto, Ontario